IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.9486 of 1999

Between:

M.N.Salgundi, S/o Narsinga Rao,
R/o. H.No.3-4-308/6/1, Lingampally,
Kachiguda, Hyderabad.

..... PETITIONER

AND

1 State Bank of Hyderabad, Rep. by its Managing Director,
Gunfoundry, Hyderabad.
2 The Chief Manager (PPG), State Bank of Hyderabad,
Gunfoundry, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or writ particularly one in the nature of writ of Mandamus or any other appropriate writ declaring Proceedings No.F/PPG/PEN.95/423 dt:1.9.1998 rejecting my eligibility for pension as illegal and arbitrary and consequently direct the respondents to extend the Bank Employees (Pension) Regulations, 1993 with all consequential monetary benefits and pass such further or other orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. G.VIDYASAGAR

Counsel for the Respondents: Mr. V.JOGAIAH SARMA

The Court made the following :

-

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Proceedings No.F/PPG/PEN 95/423, dated 1-9-1998 of the 2nd respondent rejecting the case of the petitioner for pension as illegal and arbitrary, and consequently to direct the respondents to extend the Bank Employees' (Pension) Regulations, 1993 with all consequential benefits to the petitioner.

It is the case of the petitioner that he joined the services of the respondent-State Bank of Hyderabad as a Clerk in the year 1963. He was promoted as an Officer (Junior Management Grade Scale I) with effect from 1-5-1979. While functioning as Accountant at Bellamy Branch, he was placed under suspension and an enquiry was conducted into the matter. He was ultimately imposed with a punishment of compulsory retirement from service vide Office Order dated 28-5-1988 under Regulation 67(f) of the Service Regulations of the Bank. Aggrieved by the same, he filed an appeal and the appellate authority rejected the same by an Order dated 1-12-1988. Further, the review petition filed by him was also rejected on 6-6-1989. Challenging the same, he filed Writ Petition No.4022 of 1990, which was dismissed on 1-9-1994. In the counter affidavit filed in the said Writ Petition, the respondent-Bank stated as under:

> "It is submitted that under the new Pension Rules, the petitioner is entitled for pension, since the punishment imposed on him is compulsory retirement from service. All Officers, who retired after 1-1-1986, are eligible for pension. However, the pension is payable only from 1-11-1993. The petitioner would be eligible for pension, subject to his returning back the Bank's contribution of Provident Fund with 6% interest."

Thus, the petitioner is entitled for pension as per the Scheme introduced by the Bank in pursuance of a settlement entered into between the Indian Banks' Association and National Level Associations of the employees. The State Bank of Hyderabad also approved the Pension Regulations known as 'State Bank Employees' (Pension) Regulations,1993'. As per Chapter II (2)(iii) the employees, who have retired on or after 1st January,1986, but before 1st November, 1993 are entitled to apply for the pensionary benefits, subject to the condition of refund of entire contribution of the Provident Fund. Further, as per Chapter III (16), the employees, who prematurely retired by the Bank are also entitled to premature retirement pension. The said clause (16) of Chapter III reads as under:

> "Premature retirement pension shall be granted to an employee, who is retired by the Bank or retires in advance of the age of superanuation in accordance with the provisions of the Service Regulations/Service Rules/Settlements."

Further, Chapter IV prescribes the rates of pension for which the employees are entitled to. As per the clarification issued to the Employees Pension Regulations,1993 one must have minimum service of ten years at the time of retirement upon attaining the age of superannuation and in other cases employees should have put in at least 20 years qualifying service before applying for pension on voluntary retirement. He had the requisite length of service and the Bank itself stated that he is entitled for pension under the New Pension Rules. Therefore, he filed an application on 27-7-1994 in the prescribed proforma. The same was acknowledged by the Bank on 28-7-1994 and thereafter issued the Proceedings dated 3-6-1995 stating that the pension benefit is extended in the periodical manner. However, the 2nd respondent by Proceedings dated 1-9-1998 rejected his claim for pension on the ground that he was compulsorily retired from service on 28-5-1988 i.e. prior to 1-11-1993 and, therefore, he is not eligible for pension. Hence, this Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is asserted that Regulation 33 of the State Bank of Hyderabad (Employees) Pension Regulations,1995 does not provide for payment of pension to an employee retired prior to 1-11-1993. However, it is admitted that a

settlement was reached on 29-10-1993 between the Indian Banks Association and Association of Unions of number of Banks for introduction of pension schemes in the Banking industry with effect from 1-11-1993 as second retiral benefit in lieu of contribution towards Provident Fund of the Bank. Circular instructions were issued to the Branches/Administrative Offices on 8-7-1994 with details of the pension Scheme pending approval of the Board of Directors of Bank and subject to any subsequent amendments to Regulations. It was provided in those Regulations that employees, who retired on or after 1-1-1986 but before 1-11-1993 are eligible to become members, provided that such retired employees apply for it on the form prescribed by the Bank before the stipulated time and refund the Bank's entire contribution to the Provident Fund including interest received with further simple interest at 6% per annum from the date of withdrawal of provident fund till the date of refund. Subsequently, certain amendments were taken place in the Pension Regulations and the said Regulations were renamed as Bank (Employees) Pension Regulations,1995. The Board of Directors of the State Bank of Hyderabad at its meeting held on 5-2-1996 considered the proposed Pension Regulations,1995 and approved adoption of the revised State Bank of Hyderabad (Employees) Pension Regulations,1995. In exercise of the powers conferred on State Bank of India under the State Bank of India (Subsidiary Banks) Act,1959, the Central Board of State Bank of India have also approved the Pension Regulations,1995 and the same were published in the Official Gazette on 23-3-1996. Necessary Circular instructions were issued vide Head Office Circular No.PER/96-97/15, dated 17-5-1996 in continuation of the earlier Circular furnishing the Revised Pension Regulations,1995. The word 'retirement' is defined in the Pension Regulations,1995 as including the premature retirement by the Bank before attaining the age of superannuation. But, since the petitioner retired compulsorily from the Bank's service on 28-5-1988, the same cannot be treated as a premature retirement. Therefore, the petitioner is not entitled for the benefits under the Scheme.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record.

At the outset, I am of the opinion that the stand taken by the respondent-Bank that since the definition of the word 'Retirement' does not include the compulsory retirement, the petitioner is not entitled for the Pension is not correct. In fact, the

definition of 'Retirement' in the Bank Employees' Pension Regulations,1995 would clearly show that premature retirement by the Bank before attaining the age of superannuation specified in service Regulations or Settlement is also a retirement. Therefore, there cannot be any other retirement than a compulsory retirement, which can be called as a premature retirement by the Bank.

Learned counsel for the petitioner placed a clarification issued by the Indian Banks' Association dated 1-6-2000. There is no dispute as to its binding nature on both the parties. It is stated in the said clarification as under:

> "We are, therefore, to advise that the banks may, as decided by the Managing Committee of IBA extend pensionery benefits to those officers, who had voluntarily retired from the Bank's service during the period 1-1-1986 to 31-10-1993 under the Scheme formulated by the Bank for the purpose of pensionery benefits may also be extended to those officers, who may have filed Writ Petitions against the bank in High courts seeking similar relief and which are pending disposal. Banks may, thereafter at their discretion, file appropriate affidavits in those Courts to facilitate early disposal of the petitions."

From a reading of the above, it would indicate that the petitioner is entitled for the pensionery benefits as the pension scheme has been extended to those Officers, who had retired from the Bank during the period between 1-1-1986 and 1-11-1993. In fact, by this communication the Pension Scheme was extended to those who have retired voluntarily from service of the Bank, which was not being extended earlier. In the original scheme formulated by the respondent-Bank vide its Circular dated 8-7-1994 in Chapter III, as noticed above, the premature retirement pension is granted to the employee, who is retired by the Bank or retires in advance of the age of suprannuation in accordance with the provisions of the Service Regulations/Service Rules/Settlements. Therefore, it cannot be said that the petitioner was not retired prematurely by the Bank in advance of the age of supernnuation. As such, the petitioner is entitled for the pension as contemplated in the scheme and as explained in the Indian Banks Association letter dated 1-6-2000.

However, Sri V.Jogaiah Sarma, learned counsel for the respondents, strenuously contended that the petitioner retired from service compulsorily; therefore, he is not entitled for pension. The petitioner completely falls outside the class of pensioners, who are entitled for the benefit under the Scheme originally. In this regard, he relied

upon the Judgment of the Apex Court in **V. KASTURI v. M.D., STATE BANK OF INDIA, BOMBAY** and drawn attention of the Court to pagaraph-22, which reads as under:

> "22. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioners who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme……"

I am afraid, I cannot accede to the submissions made by the learned counsel for the petitioner and the said Judgment has no relevance to the facts of this case. The question of surviving the petitioner as a pensioner does not arise in this case. Even according to the scheme of the Bank (i) those who are retired in between 1-1-1986 and 1-11-1993 are entitled for the benefit of the pension scheme, whether one retires on attaining the age of superannuation specified in service Regulations or settlement; (ii) on voluntary retirement in accordance with the provisions contained in Regulation 29 of the Regulations, and (iii) on premature retirement by the Bank before attaining the age of superannuation specified in the Service Regulations or Settlement. In this regard, admittedly, the petitioner was retired compulsorily (prematurely) from the service of the Bank. The premature retirement was by the Bank before attaining the age of superannuation specified in the Service Regulations. Therefore, the petitioner is entitled for all the benefits as a person retired prematurely from the service by the Bank before attaining the age of superanuation i.e. on 28-5-1988, which falls between 1-1-1986 and 1-11-1993.

When Sri V.Jogaiah Sarma, learned counsel for the respondents, contended that if the scheme is extended to the persons like the petitioner, the Bank would incur financial loss; therefore, such scheme should not be extended to the persons like the petitioner, learned counsel for the petitioner relied upon the decision in **BANK OF INDIA v. INDU RAJAGOPALAN & OTHERS** wherein the apex Court held as under:

> "3. All that has happened is in such of the banks where a scheme for voluntary retirement was available, certain employees retired under that scheme.

> Now a comprehensive Pension Scheme has been framed which came into force w.e.f. 1-11-1993 and is applicable uniformly to all bank employees, which provides for voluntary retirement as well. The applicability of these rules to those employees who have voluntarily retired w.e.f. 1-1-1986 to 31-10-1993 is raised in these matters. It is not possible for Shri V.R.Reddy, learned Senior Counsel who appears for the appellants to point out that there is any significant financial or other burden or difference so far as those who had voluntarily retired and those who had ordinarily retired. In that event, where there is no distinction, the authorities having sought to make a distinction and not applied the regulations framed subsequent to their retirement, the High Court has given appropriate directions. We also notice that the number of employees, who have retired in this matter is also very small. Therefore, we think no interference is called for in these appeals….."

Admittedly, in this case also, there is any significant financial or other burden or difference is caused to the respondent-Bank, if the scheme is extended to the petitioner. For all the above reasons, the claim of the petitioner needs to be answered positively.

In the result, the impugned Proceedings are set aside and the respondents are directed to extend the Bank (Employees') Pension Regulations,1993 to the petitioner with all consequential monetary benefits and pass appropriate orders in this regard within a period of three months from the date of receipt of a copy of this order.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

13-7-205

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Wednesday, Thirteenth day of July Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director, State Bank of Hyderabad,
Gunfoundry, Hyderabad.
2 The Chief Manager (PPG), State Bank of Hyderabad,
Gunfoundry, Hyderabad.

3. 2 CD copies